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German Civil Codes,⁷ is that "when the thing perishes without the tenant's fault, he is not obliged to make it good, but from that time his rent ceases," or that when the use is lessened, the rent should be apportioned.⁸

J. M. P.

PRACTICE: EXEMPTION OF SUITORS AND WITNESSES TEMPORARILY IN STATE FROM SERVICE OF PROCESS.—To the lawyer who has not had occasion to investigate the question, it may come as a surprise to know that the authorities have established certain exceptions to the general rule that any person within the territorial jurisdiction of the state may be served with process. In considering the question for the first time, the United States Supreme Court in *Stewart v. Ramsay*¹ decided what had already come to be the weight of opinion in state and lower federal courts; viz, that suitors, as well as witnesses, coming from another state or jurisdiction for the primary purpose of attending court are exempt from the service of civil process while in attendance upon court, and during a reasonable time in coming and going.² The rule seems to be the modern counterpart of the common law privilege of exemption of parties and witnesses from arrest on civil process, eundo, morando, et redeundo,³ the arrest having for the most part given way to the summons.

The privilege finds its basis in the very substantial right of every man to be sued at home, a right which he is not willing to risk by voluntarily entering another jurisdiction even to attend court. If his presence is desired, it must be solicited. The privilege becomes, therefore, the privilege of the court, and but incidentally that of the individual. It is the price which the court is willing to pay to get those before it who alone can furnish the best evidence, and to prevent the interruption of judicial machinery. It is extended, therefore, to plaintiffs as well as to defendants;⁴ and it is also extended in the case of witnesses, to attendance before legislative commissions,⁵ bankruptcy proceedings,⁶ and the

⁷ German Civil Code (1907), § 537, providing that rent be apportioned according to injury suffered.

⁸ Puffendorf, *The Law of Nature and Nations* (1729). Book V, Chap. VI, par. 2.

¹ (Dec. 4, 1916), 37 Sup. Ct. Rep. 44.

² *Parker v. Hotchkiss* (1849), Fed. Cas. 10,739; *State v. District Court* (1915), 51 Mont. 503, 154 Pac. 200; *Person v. Grier* (1876), 66 N. Y. 124, 23 Am. Rep. 35; *Rix v. Sprague Machinery Co.* (1914), 157 Wis. 572, 147 N. W. 1001.

³ *Central Trust Co. v. Milwaukee St. Ry. Co.* (1896), 74 Fed. 442; *Thompson's Case* (1877), 122 Mass. 428, 23 Am. Rep. 370; *Ellis v. De Garmo* (1892), 17 R. I. 715, 24 Atl. 579.

⁴ *Hale v. Wharton* (1896), 73 Fed. 739.

⁵ *Thorp v. Adams* (1890), 58 Hun. 603, 11 N. Y. Supp. 479.

⁶ *Matthews v. Tufts* (1882), 87 N. Y. 568, 62 How. Pr. 508.

taking of depositions.⁷ A liberal attitude has resulted in the granting of the privilege to the non-resident attorney accompanying his client.⁸ Comity has resulted in state courts allowing the exemption to apply to parties and witnesses in attendance on federal courts,⁹ and one state, at least, has extended it to witnesses passing through the state to attend a sister state's courts.¹⁰

This principle of exemption from process offered as an inducement for attendance must necessarily contemplate any case where attendance on court is voluntary, and exclude the case where presence in the jurisdiction is compelled. In those jurisdictions, therefore, where witnesses residing in another county in the same state are not subject to compulsion, they are exempt while voluntarily attending court in another county.¹¹ The California Court, however, early took the contrary position,¹² though such witnesses are exempt from arrest. On the other hand, a person in a criminal proceeding, dragged into the jurisdiction by extradition process, cannot avail himself of a reward intended only for voluntary appearance.¹³ The apparent exception of persons extradited from foreign countries, who cannot be proceeded against except for the offence for which extradited, rests solely upon treaty provisions.¹⁴

The service of civil process upon a privileged person, however, is not void, and the privilege must be asserted at the first opportunity or it is waived.¹⁵ And an act of a privileged person while in the jurisdiction, which itself gives rise to proceedings against him, is regarded as a waiver as to those proceedings.¹⁶

W. A. S.

PUBLIC SERVICE COMPANIES: SCOPE OF FEDERAL EMPLOYERS' LIABILITY ACT.—The relation of interstate carriers to their em-

⁷ *Burroughs v. Cocke & Willis* (Okla., 1916), 156 Pac. 196.

⁸ *Central Trust Co. v. Milwaukee St. Ry. Co.* (1896), 74 Fed. 442; *Read v. Neff* (1913), 207 Fed. 890. *Contra*, *Greenleaf v. People's Bank* (1903), 133 N. C. 292, 45 S. E. 638.

⁹ *Bunce v. Humphrey* (1915), 214 N. Y. 21, 108 N. E. 95; *Sofge v. Lowe* (1915), 131 Tenn. 626, 176 S. W. 106.

¹⁰ *Sofge v. Lowe* (1915), *supra*, n. 9.

¹¹ *Gregg v. Sumner* (1886), 21 Ill. App. 110; *Reiff v. Tressler* (1912), 86 Kan. 273, 120 Pac. 360; *Sebring v. Stryker* (1894), 10 Misc. Rep. 289, 30 N. Y. Supp. 1053.

¹² *Page v. Randall* (1855), 6 Cal. 32.

¹³ *Netograph Mfg. Co. v. Scrugham* (1910), 197 N. Y. 377, 90 N. E. 962, 27 L. R. A. (N. S.) 333. The federal courts take a contrary position wholly because of stare decisis. *Feister v. Hulick* (1916), 228 Fed. 821.

¹⁴ *U. S. v. Rauscher* (1886), 119 U. S. 407, 30 L. Ed. 425, 7 Sup. Ct. Rep. 234; *In re Reinitz* (1889), 39 Fed. 204.

¹⁵ *Matthews v. Puffer* (1882), 10 Fed. 606; *Weston v. Citizens' National Bank* (1901), 64 App. Div. 145, 71 N. Y. Supp. 827.

¹⁶ *Nichols v. Horton* (1882), 14 Fed. 327; *Iron Dyke Copper Min. Co. v. Iron Dyke R. Co.* (1904), 132 Fed. 208.